(2)

Supreme Court, U.S.
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CLERK

No. 95-1963

In The

Supreme Court of the United States

October Term, 1995

FRED RUCKER,

Petitioner,

v.

CITICORP SAVINGS OF ILLINOIS

Respondents.

On Petition for a Writ of Certiorari
To The Illinois Court of Appeals for the First District

PETITIONER'S REPLY BRIEF

July 5, 1996

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PETITIONER'S REPLY BRIEF

Respondent's arguments highlight why this Court should grant the Petition.

By promoting the technical issue "lack of jurisdiction", Respondent is conceding the central issue in this case.

The primary reason the case is before this Court is because Respondent violated State and Federal laws that led to the loss of Petitioners property.

Given the fact that Respondent admitted to the negligent actions that caused the property loss, the dispute should have been resolved in the Trial Court.

Respondent's statement:

> "Our review has determined that you received inconsistent information from us and our affiliate service regarding the amount of forced placed insurance premiums that would be charged to your mortgage loan account and the coverage provided thereby.
> As a result of this poor customer service on our behalf, we will agree to reduce the amount of our claim in your Chapter 13 Bankruptcy by $10,000."

The state appeals court's dismissal of this case in light of the evidence hinges on malfeasance.

I. In 1992, Federal Examiners Disclosed A Mortgage Escrow Scam Promoted By Respondents. The Discovery Forced Respondents To Return Twenty-Eight Million Dollars To Their Mortgage Holders.

The litigation in this case began in 1988 over what was considered an error in calculating this Petitioner's mortgage escrow. A four thousand dollar overcharge quickly became thirty thousand dollars, leading to foreclosure and ultimately a sheriff's sale of the property.

After many attempts at mitigation, Respondent reluctantly agreed to reduce their claim by ten thousand dollars (only one third of the amount

claimed). This reduction was conditioned on keeping the matter confidential. Years later, it became evident why the confidentiality had been requested. Nevertheless, the amount was never adjusted and Respondent refused to return the property even with a firm commitment to pay the debt in full. A review of the documents in Appendix A will better explain how the escrow scam worked.

The number of citizens affected by this scam is of alarming proportions and is a matter of public interest.

II. Respondent Attempts To Divert The Courts Attention By Raising The Issue Of "Lack Of Jurisdiction" Because No Constitutional Question Was Raised In The Initial Complaint.

Violation of the Fair Housing Act is a violation of Federal law.

What was believed (in 1988) to be corporate negligence, was in fact a contrived infringement of Petitioner's individual property rights, protected under the Fourteenth Amendment.

When Congress established the Fair Housing laws in the 1960's (under the Civil Rights Act of 1964 and the Fair Housing Act of 1968), a major contingent of the Act was to regulate the insurance industry, i.e. how rates were established. Congress recognized that the insurance industry, through its practice of manipulating rates (price fixing) was having a devastating impact on cities and communities across the country. Their impact was so controlling that it prompted Mr. Justice William Douglas to state:

"Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy."

The practice of manipulating insurance rates is termed "Redlining". Redlining occurs typically in minority communities where insurance is either denied or the rates are set too high for property owners to maintain their property.

In a landmark decision, a federal judge in Dayton, Ohio ruled on June 23, 1979 that the Fair Housing Act applies to insurance redlining. (See Appendix A)

Judge Carl B. Rubin's decision in the Auston Dunn v. Midwestern Indemnities case set a national precedent. It was the first time the Fair Housing Act had been specifically applied to insurance redlining.

In his decision, judge Rubin said:

"The availability of appropriate insurance is a necessary precondition to the availability of financing, and financing assistance is a pre-condition to securing the availability of adequate housing. Since insurance is a precondition to adequate housing, a discriminatory denial of insurance would present a person, economically able to do so, from buying a house. Consequently -- insurance redlining is encompassed by both the broad language of 360 (a) and the legislative design of the Act which seeks to eliminate discrimination within the housing field."[1]

---

[1] "It is a violation of civil rights to refuse to sell or rent after making a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin." - Fair Housing Act of 1968

In this case, the excessive insurance rates were initially dismissed as "corporate negligence". However, because the excessive rates were allowed to stand and the sale of the property allowed to proceed, (Radar v Bussey) Respondent is guilty of several egregious violations, one of which is redlining.[2]

The subject matter alone in this case established this Court's jurisdiction. Respondent need only to read petitioner's Brief on Appeal (pg. 5 par. 4) to learn that a constitutional question was in fact raised in the lower court.

III. The Court Should Review This Case To Clarify Whether Controversy Existed When The State Dismissed For "Mootness".

In every case where restitution or compensatory damages may be awarded, the Court has ruled the case was not "moot". Respondent's contention that since the property was sold the case was moot, is contrary to this Court's majority philosophy on the matter. The mootness doctrine requires that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." See Powell v. McCormack 395 U.S. 486, Liner v. Jafco, Inc. 375 U.S. 301 (1964), Roe v. Wade 1973, DeFunis v. Odegaard (1974).

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[2] A federal audit conducted in 1992 on Respondent's mortgages portfolio disclosed that more than twenty-five percent of the mortgage escrow balances were calculated in error. Twenty-five percent represents tens of thousands of individuals being overcharged amounts totaling several million dollars. In Petitioner's case, a twenty thousand dollar balance became more than sixty-thousand dollars owed as a result of Respondent's calculations.

Respondent committed the contemptuous act of Transferring Title while the ownership was under review so they could make the argument that the case was "moot".

The U.S. Supreme Court will not treat a case from the state court as "moot" in the situation where state judgment causes "direct, specific, and concrete injury" to the parties who petition for review, assuming that otherwise the requisites of a case or controversy are met. Asarco, Inc. v. Kadish, 490 U.S. 605, 109 S. CT. 2037. This Petitioner was made homeless by State action and remains so.

Article III Courts may not decide moot questions, only actual cases or controversies.

> "A justifiable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Insurance Co. v. Haworth, 300 U.S., 227, 240-241.

IV. The Court Should Grant The Petition To Clarify The Standard Of Review As Set Out By The U.S. Court Of Appeals, (Third Circuit) For Granting Oral Argument, Which The State Court Grossly Misapplied.

The U.S. Court of Appeals for the Third Circuit, which has studied the problem of eliminating oral argument and has listed as a criteria for granting oral argument the following:

"Where a decision, legislation, or event, subsequent to the filing of the last brief may significantly bear on the case."

The last brief was filed in July of 1994. Respondent transferred title October 24, 1994. The transfer of title after the last brief was filed is the most significant event of the proceedings and should have warranted oral argument.

The state court abused its authority in dismissing the case, given the facts and evidence involved.

CONCLUSION

All of the evidence when viewed so overwhelmingly favors Petitioner that no contrary verdict could ever stand.

The U.S. Constitution and the Constitution of the State of Illinois protects its citizens from the deprivation of property. Petitioner has demonstrated in the lower courts that Respondent's actions were illegal under Federal and State law. Federal Examiners have criticized Respondent for their high tech thievery through escrow accounts, and Respondents themselves have admitted to the negligence that caused the property loss.

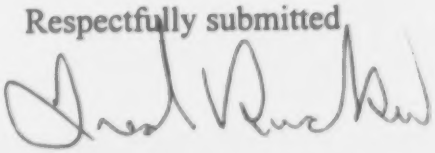
When Congress established legislation i.e., The Fair Housing Act, the Commerce and Fair Trade Act and the Consumer Fraud Act, the intent was to discourage fraud and to promote fair play in the marketplace.

Respondents have violated each of these Acts and caused egregious injury to thousands (including this Petitioner) and have escaped review.

The State court has also caused injury through the abuse of its' authority. The U.S. Court of Appeals for the Third Circuit has established procedures that have been ignored by the State Court in this case.

For the foregoing reasons, and the benefit of countless individuals whose rights have been violated by those abusive actions, the Court should review this case.

Respectfully submitted,



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The Chicago Tribune

Examiners criticize Citicorp mortgage unit

New York Times News Service

NEW YORK — Federal bank examiners have criticized Citicorp's home-mortgage subsidiary, one of the largest in the country, for sloppy practices that exposed the banking company to excessive risk and overcharged many customers.

The examiners' document, provided anonymously to the New York Times on Wednesday, chastised management for a variety of mistakes and said top executives "have neglected their responsibilities to correct identified problems."

It said some problems identified as long ago as 1988 have not been corrected.

John M. Morris, a spokesman for Citicorp, declined to comment and noted that the same laws that make it a criminal violation to publish parts of a bank examination report "make it illegal or us to discuss it." The Comptroller of the Currency's office also declined to comment.

Citicorp has corrected some of the problems identified in the report, which is dated Aug. 18. Earlier that month, Citicorp admitted that problems identified by the examiners were forcing it to revise its second-quarter earnings downward by $28 million, to $143 million.

The document says the company was doing such a poor job of screening out unqualified home buyers that a high percentage of the mortgages it originates cannot be sold to other investors unless Citicorp promises to buy them back in the event of a default.

The poor practices in the lending process singled out in the report also affect consumers who rely on St. Louis-based Citicorp Mortgage Inc. to keep track of monthly payments on their mortgage and escrow accounts. Escrow accounts were incorrectly calculated in 25 percent of all the loans issued by Citicorp Mortgage in January and February, the bank examiners found.

Respondent admits negligence - News article suggests FRAUD.

Washington Post
Sunday, June 24, 1979

Fair Housing Act Used in Insurance Suit

CINCINNATI–A U.S. District Court Judge has ruled that the Fair Housing Act can be used to sue insurance companies for allegedly denying homeowners insurance on the basis of the racial composition of a neighborhood.

Civil rights attorneys in Washington said the decision by Judge Carl B. Rubin set a major precedent.

Rubin's ruling came last week in a $4.42 million suit filed last May by a Dayton, Ohio, couple against five insurance companies in Ohio and Indiana and a Dayton insurance agent.

The suit charges that Austin and Mary Dunn were victims of racial discrimination because their $30,000 homeowners'insurance policy, which they held with the same independent company for 22 years, was abruptly cancelled in December 1977. The couple claims it was cancelled because they are black and their home is located in a predominantly black neighborhood.

In his ruling, Rubin denied a motion by Midwestern Indemnity Co., which sought to dismiss the Dunns' contention that the Fair Housing Act, a section fo the 1968 Civil Rights Act, applies to insurance companies.

Rubin ruled that the insurance industry is covered by the act.

Rubin did not rule on whether there was any discrimination. Rather, he ruled the case could go to trial to decide that question.

In New Orleans, a federal appeals court has upheld the right of a community association to sue a real estate firm for allegedly "blockbusting" its racially mixed New Orleans neighborhood.

CITICORP SAVINGS OF ILLINOI100
P.O. BOX 44
CHICAGO, IL 60680

ACCOUNT NUMBER
0000108027
MORTGAGE ACCOUNT PAID TO
12/15/87

ANNUAL STATEMENT OF MORTGAGE ACCOUNT FOR 1987

	PRINCIPAL	ESCROW IMPOUND	UNAPPLIED
BEGINNING BALANCE			
ENDING BALANCE	20931.96	620.3	0.00

700-00000108027

INFORMATION FOR TAX PURPOSES REQUIRED BY IRS

RECIPIENT'S/LENDER'S NAME AND ADDRESS
CITICORP SAVINGS OF ILLINOIS
P.O. BOX 44
CHICAGO, IL 60680

RECIPIENT'S TAX I.D. NUMBER: 13-3286988
PAYER'S TAX I.D. NUMBER: 311-44-9394

PAYER'S/BORROWER'S NAME AND ADDRESS
0000108027
FRED RUCKER
P.O. BOX 7719

SUBSTITUTE FORM 1098 OMB NO 1545 0901

SEE REVERSE SIDE FOR TAXPAYER INSTRUCTIONS

INTEREST PAID	
[illegible]	1755.81

INTEREST SHORTAGE UNPAID BALANCE

DISBURSEMENTS FROM ESCROW ACCOUNT	
REAL ESTATE TAXES	1615.33
HAZARD INSURANCE	
MORTGAGE INSURANCE	
MISC	
REFUNDS TO CUST	

CONSTRUCTION LOAN ONLY

BUY DOWN BALANCE ACCOUNT
BEGINNING BALANCE
DISBURSEMENTS
INTEREST ADDED IF APPLICABLE
ENDING BALANCE

100000003964

11a

[redacted]	[redacted]	[redacted]	[redacted]
0006473059	12/19/91	01/15/92	$13,747.104

MP 429.00

FRED RUCKER
1458 EAST 71ST STREET
CHICAGO IL 60619-1563

CITICORP MORTGAGE INC.

000064730591 0000042900 0000043975 0001374704

DETACH HERE

[redacted]

Mortgage Account No.	0006473059	Type of Mortgage	
Property Address	1456-58 E 71st PL Chicago, IL	Current Balance	$25,211.50
		Interest Rate	9.000 %

[redacted]

	PAYMENT RECEIVED	CURRENT PAYMENT DUE
Date	12/13/91	01/15/92
Principal		$75.09
Interest	$645.00	$139.91
Escrow	$642.00	$214.00
Optional Insurance		
Additional Payment		
Mortgage Payment	$1,287.00	$429.00
Pay Due Amount		$12,867.27
Late Charges		$450.77
UNAPPLIED FUNDS	$824.50-	
TOTAL AMOUNT	$1,287.00	$13,747.04

Total Amount to be received
Total Amount Due After

[redacted]

$2,580.00
$1,182.79

[redacted]

11/20/91	BEGINNING ESCROW BALANCE	$33,026.29-
11/20/91	ESCROW PAYMENT RECEIVED	$214.00
12/13/91	ESCROW PAYMENT RECEIVED	$214.00
12/13/91	ESCROW PAYMENT RECEIVED	$214.00
12/19/91	ENDING ESCROW BALANCE	$32,384.29-

A TAX AND INTEREST STATEMENT FOR INCOME TAX PREPARATION WILL BE SENTBY JANUARY 31, 1992.

[redacted]

2597

CITICORP

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(708) 953-8534
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(Northwestern Illinois)

February 4, 1994

Hauselman & Rappin
Attorneys at Law
39 South LaSalle Street
Chicago, Illinois 60602

Attention: Steven R. Rappin, Esquire

Re: **88CH 10806 - Citicorp v. Rucker, et al. Offer to Purchase Property in Question**

Gentlemen:

In accordance with our telephone conversation today, and my subsequent discussion with Mr. Fred Rucker, I understand that he has obtained a firm commitment of financing and has made a formal, written offer to purchase the subject property from your client for a cash price of $55,000.00. I also understand, however, that your client will not accept such an offer (or apparently any other offer from Mr. Rucker) unless he will agree to dismiss and release any potential and existing litigation, claims, or other proceedings against your client.

Mr. Rucker has directed me to reject any acceptance that is so conditioned on the totally unrelated requirement by your client for release and dismissal of any claims of rights he believes he may have against "Citicorp", et al.

I earnestly request that the ask your client to reconsider its position and that Mr. Rucker's patently fair offer (for property purchased by your client for some $53,400) be accepted. I will be happy to work with you in this regard. It would seem that such an acceptance could reduce or eliminate at least one aspect of Mr. Rucker's claims.

We look forward to hearing form you. Thank you for your cooperation.

Sincerely,

s "(_____)"
Ralph W. Miller, Jr.

RWM:r
Copies to: Mr. Fred Rucker
Joseph R. Mitchell, Esquire

Civil provisions

42 U.S.C. § 1981: "*Equal rights under the law.* All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and executions of every kind, and to no other."

42 U.S.C. § 1982: "*Property rights of citizens.* All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

42 U.S.C § 1983: "*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

42 U.S.C. § 1985(3): "*Conspiracy to interfere with civil right.* (3) [If] two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; [the] party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."